To
Walter C. Linbarger
Compliments of
The Author

"HANGED BY THE NECK UNTIL YOU BE DEAD;"

OR,

WHY THE DEATH SENTENCE SHOULD BE ABOLISHED.

BY A
MEMBER OF THE NEW YORK BAR.

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INTRODUCTION.

The question of the abolition of capital punishment is one which has been agitated for many years, and learned men, for and against, have discussed it before the public, through the press, and in the halls of legislation. The author is well aware that only a minority of the people—even in this age of enlightenment—agree with him, but believes that that minority is larger to-day by a hundred fold than it was half a century ago. The desire to execute human beings for capital offences is too firmly rooted and grounded in Society and the State to be eradicated except by discussing rationally and seriously the inhumanity of the practice. The reader is asked to consider the question presented herein, which is destined to engage the attention of the people of all nations in the future as they become more thoroughly educated in moral and Christian truth.

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"HANGED BY THE NECK UNTIL YOU BE DEAD."

CHAPTER I.

THERE is evidently a decided tendency on the part of many to look with increasing anxiety, every year, for a change in the mode of punishment of criminals convicted of murder. Men who, a few years ago, advocated the death penalty, now think and talk differently; the public mind has at length acquired fortitude to consider seriously any argument which may be presented to abolish legal executions,—and we fully believe that now, at the beginning of the second century of our national existence, the people of our country mean to take this subject into consideration with a view to practical results, and study it without prejudice, for the highest

good of society and the State, and for the prevention of crime. No fact is better established than this: Whatever the people do to prevent crime, not only aids in promoting a moral sentiment in society, but reduces the burdens of taxation, and finally leads to the permanent good of those who often through neglect become criminals.

In advocating the absolute and unqualified repeal of the law of capital punishment, there is but one motive of the author, and that is to awaken in the people a proper sense of the importance of its repeal, and to characterize this law as one which ought not to be allowed to longer disgrace the statutes of our Christian country. The nobler and better feelings of the human heart shrink from those sad scenes wherein human life is offered as an atonement for crime; and those who live when this law of judicial murder becomes a thing of the past, will thank God for its abolition and regret that it ever prevailed as an American method of punishment.

It has always been the design of the lawmakers of all nations, so far as possible, to pass such laws as would tend to terrify the murderer

and decrease this crime. In ancient times, it was applied to the secret killing of another. Among the Goths, in Sweden and Denmark, when a secret murder was committed, the law demanded that the community among whom such secret murder took place, should give up the murderer, and, on their failure to comply, the Vill in which the crime was committed, was liable to a heavy fine or amercement. This custom emanated from the presumption that the whole populace of the Vill perpetrated the crime, or were accessory to it. Hence, if no surrender was made —whether or not the murderer was known to the Vill—a heavy amercement was laid upon its inhabitants, innocent and guilty alike.

During the reign of that bloody monarch of England, Henry the Eighth, a statute was passed legalizing the boiling to death of any person found guilty of murder by poisoning. This offence was looked upon as the most henious and dastardly of all murders; wherefore there appeared no method so satisfactory for disposing of such a murderer, or to avenge such a crime, as that of boiling the wretch to death! The iniquitous law had its origin in a case that happened during Henry's reign. A cook, by the

name of John Roose, was detected throwing poison into a large pot of broth prepared for the Bishop of Rochester's family, and for the poor of the parish. He was at once arrested, tried, convicted of the terrible crime, and, under this more terrible statute, was sentenced to be boiled to death. Thus, amid the excitement of the populace, at a dark period in England's history, when her subjects knew but little of religious or human obligations, this man died by this most ignominious and horrible torture.

Lord Coke, in his works, reports many cases where persons suffered death by this heathenish punishment. But this law, even in such times, remained but a short period to disgrace the English statutes. It was repealed by 1 Edward VI: C. 12.

At common law, murder is "when a person of sound memory and discretion, unlawfully killeth any reasonable creature in being, and under the King's peace — with malice aforethought, either expressed or implied." This is the definition given by Sir Edward Coke, and it has become the *lex terræ* of all civilized nations.

The several States of this Union have based their statutory enactments upon this definition, as will appear by a careful perusal of the laws of most of the States of this Union.

That great and learned commentator, Blackstone, who lived and wrote more than a century ago, at a time when the people of England were more clamorous for the blood of the murderer than they are now, wisely said, that "it was far better ten guilty men escape than that one innocent person suffer." No one will question the wisdom of the saying, for in the humane recesses of every man's breast will be found a like sentiment. Nor can any one doubt that, if Blackstone were living to-day, he would—taking into consideration all his writings upon this subject, which very clearly and emphatically define his feelings—be expressly in favor of the total abolition of capital punishment. We find in his writings, side by side with the admission that while it was highly important for the king's peace that all murderers should be severely punished, a spirit of mercy permeating every page—a sublime voice declaring that there should be some other mode of punishing the murderer than by death. Writing of crimes

against the person, he says: "The most principal and important is the offence of taking away that life which is the *immediate gift* of the great Creator, and of which therefore no man can be entitled to deprive himself or another, but in some manner either *expressly commanded* in, or evidently deducible *from*, those *laws* which the Creator has given us: the *divine law* I mean, of either *nature or revelation.*"* The question therefore arises: Where do we find a right given man, coming from the Creator, to take that which the Creator alone can give, and which neither by "nature or revelation" we have a right to take? Again Blackstone says: † "To shed the blood of our fellow creature is a matter that requires the *greatest deliberation* and the fullest conviction of our own authority, *for life is the immediate gift of God to man*, which neither he can resign nor can it be taken from him *unless by the command or permission of Him who gave it*; either expressly revealed or collected from the laws of nature or society by clear and indisputable demonstration." And again: "When a question arises *whether death* may be lawfully inflicted for this or

* Sharswood's Blackstone, 4th Vol., page 176.

† 4 Vol. Sharswood's Blackstone, p. 10.

that transgression, the wisdom of the laws must decide it."*

When a murderer is "hung by the neck until he be dead," then it is that the State, by and through its sovereign power, applies the *lex talionis*, which is against the very essence of the divine law coming to mankind from the Saviour.

The history of the world presents many different modes of executing the murderer, or those who committed offences for which they suffered the death penalty. Men have been boiled, made to take the same kind of poison they gave their victims, their heads have been severed from their bodies, they have been shot in war, burned, starved, hanged by the neck, drawn and quartered, and otherwise judicially slain, according to the statutes in force at the time.* The principle is the same in all cases, no matter by what process the life is taken, or under what law the condemned is made to expiate the crime committed.

In the early history of England, there was much discussion as to whether the king could

* 4 Vol. Sharswood's Blackstone, p. 10.

change the punishment that the law imposed upon a subject for a crime to which the death penalty attached.

While the statute remained in force for beheading and burning, it was often varied by the king, who made hanging the penalty or vacated that part of the sentence which gave the sheriff orders to burn the body of the dead. When Lord Stafford was convicted for the Popish plot, during the reign of King Charles the Second, he was sentenced to be beheaded, and the sheriffs were ordered to carry that sentence into execution. But before the execution took place, and after the king's writ was received, the sheriffs petitioned the House of Lords for instructions how to execute him, believing as Lord Stafford had been prosecuted for impeachment—a crime punishable by death—that the king could not change the sentence in any way. The lords resolved that the sheriffs' scruples were groundless, and declared that he must forthwith obey the king's writ. The discussion also engaged the attention of the Commons, who, after a debate extending over two days, at length sullenly resolved that the king's writ must be obeyed,

and that Lord Stafford's head should be severed from his body.

There is an old adage—"it is a long lane that has no turn." Men often in this life are visited with the arbitrary injustice they meet out to their fellows.

When this case of Lord Stafford's came before the House of Lords, Lord Russell, who was a member of that body, claimed that if a king's subject was sentenced to be beheaded and the body burned, the king could not remit any part of the sentence. It is related that he took a decided stand in favor of this doctrine; and the sentence, fiendish in all its conditions, was carried out; and Lord Stafford was beheaded and burned.

But to Lord Russell there came a day of reckoning. That which he advocated and was instrumental in causing to be meted out to Lord Stafford, came near being his own fate. He was afterward condemned for high treason, and had pronounced upon him the same sentence imposed upon his unhappy peer.

He appealed to the king to be spared the ignominious part of the sentence; and the king re-

mitted it, observing "that his lordship would now find that he was possessed of that prerogative which in the case of Lord Stafford he had denied him."

Blackstone, in commenting upon the case, says: "One can hardly determine (at this distance from those turbulent times) which most to disprove of, the indecent and sanguinary zeal of the subject, or the cool and cruel sarcasm of the sovereign."

In the year 1798, two brothers, Henry and John Shears, were tried at Dublin, Ireland, and convicted of high treason. The renowned Lord Norbury, the brilliant Curran, and the invincible Plunkett, were engaged in the trial. It was in an epoch of Ireland's history when England stood ready to draw the sword for the most trivial of offences. Curran in this case made one of his grand speeches. It was upon an objection his associate raised to one of the grand jurors who framed the indictment, on the ground that such juror was an alien—not naturalized.

In ordinary times this objection would have been fatal. But the excitement was great, and

the feeling intense against the prisoners. They were men of distinction and prominence, of education and of great influence in Ireland. Lord Carlton presided at their trial. In reading the account of it, there is observable a strong bias, both from the bench and from the witness stand. Every question of law, every objection that was made by the defence to immaterial evidence,—in fact, all proceedings which could be construed in favor of the prisoners, were ruled out by this Court, and the trial was rushed to a conclusion as probably no trial, of so much importance, ever was before.

Curran fought nobly for the unfortunate men. Many times he overpowered the court by his eloquence and masterly argument; and when there was a visible effect in his brilliant forensic efforts upon the jury—made at almost every step of the trial—the prosecution and the court sought by every means to check, combat, and counteract it. It was a case in which the court all but proclaimed in advance that the prisoners must die because they were traitors, and because the loyal subjects of the king demanded protection and satisfaction.

The jury retired, and in just *seventeen minutes* brought in a verdict of "Guilty!"

After a feeling lecture to the prisoners, Lord Carlton pronounced the sentence, that they *be executed the following day;* and after preparation by the sheriffs, these brothers were taken, arm in arm, upon the scaffold, and were hanged by the neck until they were dead. After they were let down, to add still greater horror to the execution, the hangman separated their heads from their bodies, and, taking them up severally, proclaimed to the bloodthirsty crowd—"*Behold the head of a traitor.*"

These cases have been selected to illustrate the moral condition of those times. They prove that it was an easy and pleasant thing for a jury to condemn, for judges to sentence, and for hangmen to execute those who were convicted of any of the crimes punishable by death.

Thus, in England, the judges of the olden time were the creatures of the throne: they were but the king's automatons echoing his sentiments. They pronounced the death sentence when commanded, and the people reposed in the old Mosaic law as a defence of the laws

which were then enforced against murderers and others condemned by statutes to be mercilessly put to death. We find them proclaiming from the bench—speaking for the throne—the old Mosaic law: "Thus saith the Lord of Hosts" —"and, moreover, ye shall take no satisfaction for the life of the murderer who is guilty of death, but he shall surely be put to death, for the land cannot be cleansed of the blood that is shed but by the blood of him that shed it." Can it not be truthfully said, that to-day this same spirit actuates a majority of those who recognize the Christian dispensation? Even so late as the 18th century, it was made in England a capital offence to maliciously break down a fish pond wherein fish were kept and liable to escape, as well as to maliciously enter an orchard and then cut down or wilfully injure any cherry tree. These statutes were in force during the reign of the first and second Georges. But as time elapsed, and the people became more liberal, these barbarous statutes were repealed, and during the reign of George the IV. the offender and his accessories became liable to banishment or imprisonment, at the discretion of the throne. Thus, at every step in history, we are horror

stricken by the bloodthirstiness that characterized our species since God set His mark on Cain and sent him forth to be slain, down even to the nineteenth century, gilded as it is by the beams of the Sun of Righteousness.

But the grosser atrocities were confined to an age of blood,—an age of crime and superstition. They happened before mankind learned the teachings of Christ—before the people understood what Christ's mission to earth was, or while understanding they disregarded it. They ignored those beautiful teachings: "Whosoever shall smite thee on the right cheek, turn to him the other also." "Whosoever shall compel thee to go a mile, go with him twain." "*Be merciful and thou shalt obtain mercy.*"

Yet, this language was addressed equally to the State as to the individual, and it is surely the duty of the State to see to it that the law of man *does not* conflict with the law of God. As an intelligent being, it is clearly the duty of each and every citizen, whether for or against the abolition of capital punishment, to study the will of our Saviour and the language of Christ's sermon on the mountain—admitted by secular philosphers to transcend the wisdom of Plato.

But in it there is not one word to justify the act of hanging human beings for any crime whatever.

When we come to a more minute examination of this very important subject, we find all opposition comes from those who have opinions based upon the law laid down in the old testament and at a time long before men cultivated or became possessed of those finer feelings which have come to mankind by education and Christian precept. It was during the dark ages that earthly laws were framed. From then until now, men have been executed in all countries in different ways, for different crimes. Hence the prejudices which now exist against any material or permanent modification of this law, are based solely upon the theory that the law of retaliation is as much needed at this time as when in the dark ages human passions were intractable to restraint.

CHAPTER II.

It must be conceded that no State can afford to frame laws on principles of compassion for guilt; yet, justice can be meted out to the condemned by an act of government—which is the supreme power of the State—that is not a personal thing nor inconsistent with justice but for the good of the State and for the welfare, happiness and peace of the people.

We are bound by every interest of humanity —by every law that came by and from the Author of Mankind—to administer justice in mercy to the condemned offender.

When there goes to the Governor of a State strong appeals for executive interference and clemency;—long petitions signed by humane sympathising christian people for the pardon of offenders—when there is ushered into his presence some prayerful mother, who has appeared for the purpose of obtaining a pardon for her wayward boy—a boy over whom this fond mother has prayed from infancy, and for whom she now sheds bitter tears as she beholds him about

to be led upon the scaffold to die in ignominy; when a fond wife is ready to die for her husband rather than have him cast into a criminal's grave to disgrace her innocent children, that governor's position is an unenviable one, and those who know nothing of these scenes can form but a faint idea of the executive's feelings and responsibilities at such times.

We often hear it remarked that governors of States abuse the pardoning power in the magnanimity extended by them to those who are sentenced to be executed, and they are unmercifully abused by a portion of the press, and by those who long to stand beneath the gallows whereon these wretches are to be executed, and exclaim with emphasis, "hang him, it serves him right." But, humanely speaking, no man was ever yet pardoned who should have suffered death; for death, though the law may declare otherwise, ought to come only from the Author of Man when He chooses to send it. Therefore, when kings, potentates, governors, or others in authority, having the lives of human beings in their hands, and in virtue of the powers vested in them grant pardons, the question very properly is presented—Do they err in exercising the

humane clemency of sparing a poor suffering being from the disgrace and ignominy of the gallows, and should they be condemned for such great and noble acts of mercy? How many poor innocent children have been disgraced by the execution of a father, and how many friends and relatives have been saddened by these judicial murders? Many men have been hanged because they committed murder in the heat of passion caused by provocation, but not justifiable by any means, however surrounded by extenuating circumstances. Who will say that justice would not have been as well served if the prison could have taken these men instead of the gibbet? Then those who sit as judges upon the trials of criminals have a most unpleasant and solemn duty to perform in passing sentence upon a poor condemned fellow being. Almost every judge will assert that the most unpleasant part of his duty upon the bench is to preside in cases of murder, whenever unfortunate men are being tried for their lives.

No human being can go through the trial of a murderer as judge, counsel, or juror, without feeling that there is a power over and beyond the power of man, which should lead and guide in

this most momentous, solemn duty. And when the jury convict and the judge, in solemn tones, pronounces the death sentence upon the criminal, "hanged by the neck until you be *dead*," there goes a deep shudder to the heart of every sympathizing human being who reads or hears this fiat and who is not confirmed in the belief that this law is right.

To say that in this age of Christian civilization and human progress, this mode of executing men, which emanated from the old Mosaic law, should be continued, is a disgrace to our nationality. To keep in vogue the ancient doctrine of "an eye for an eye, a tooth for a tooth," should cause the blush of shame to appear upon the cheek of every being who sanctions it.

It is an admitted fact that there are many good people who view the question of the total abolition of capital punishment in a light different from this. They think that its abolition would not be conducive to the best interests of society and the State, and therefore are honestly against any change. No matter what religious argument is presented or brought forward in opposition to such practice, they assume that

society has not only Divine right, authority, and precedent, but that it has an absolute, inherent right to say that he who offends and breaks the sixth commandment shall suffer death for the good of society—shall by his own life atone for that which he has taken. They hold, if it were not so ordained of God, that centuries ago this custom would have become extinct. In replying to these arguments, advanced so confidently by a majority of the peoples of this and other countries, and as strongly and indelibly impressed upon the minds of men as they were during the bloody reign of Henry the VIII of England, there is found a full, complete and satisfactory answer in the 10th Chapter of Hebrews, 30th verse: "For we know him that hath said vengeance belongeth unto me, I will recompense, saith the Lord." And, also, in the 5th Chapter of Matthew, 7th verse, when Christ, as he stood before that multitude on the mountain, said: "Blessed are the merciful, for they shall obtain mercy."

In the wisdom of our common Father in Heaven, He has constituted no two human beings alike. Look into a hundred thousand faces, and there may be found, it is true, some resem-

blance, but there are no two alike. So with the mind. It is in His divine economy different in every human being. No two persons' thoughts upon any given subject run in the same channel; no two persons treating of the same subject will treat it alike. They may come to the same conclusions, but as they travel along the lines of their subject they depart from each other, and are only united at the goal of their investigation. So men have in the past and will differ for some time to come regarding capital punishment. But we do not fear they ultimately will agree that it should be abolished.

No great reform has ever been brought about without labor. It has cost many thousands of lives to establish firmly the religion of our Saviour. It is not necessary in this volume to specify any particulars in this regard, nor need we refer to the blood and treasure that has been sacrificed from time immemorial to establish those great reforms which have brought mankind nearer right upon all questions which were sought to be established and which are intended to bring men nearer to right and justice.

Thus it is not surprising that in this land today we find Christian men—yes, and *Christian*

ministers—who are boldly giving this law their sanction, and thereby aid in keeping upon the statute books of most of the States this law of judicial murder. It is not surprising that some of our most learned Christian men fully believe that it would be an injudicious thing to repeal this law, which they claim acts as a preventive of the crime of murder.

Elizabeth Fry, who has made the condition of the inmates of States prisons and penitentiaries a study, and who has had great opportunities for observation, says, that "the frequent public destruction of life by execution has a fearfully hardening effect upon those whom it is intended to intimidate." She further says: "While it excites in them the spirit of revenge, it seldom fails to lower their estimate of the life of man, and renders them less afraid of taking it away in their turn by acts of personal violence."*

During the great rebellion, Secretary Stanton was importuned day and night to pardon soldiers who were under sentence of death and were to be shot. No tears, no pleading, no petitions of mercy were of any effect. He was inexorable.

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* Janney's Life of George Fox, p. 464.

He would not allow himself to interfere with the army discipline. If a military court decreed, or military orders were issued, to shoot any soldier, they must be executed. There was no appeal from that decision, and he turned from him every pleading friend of a condemned man as if they were not worthy his attention for a moment.

It is not for us to say that in times of rebellion —when we were struggling for national life—that he was not right. War creates desperate means for desperate ends. But look at the course of that good man, President Abraham Lincoln, in whose heart there was "malice towards none," "charity for all." Time and again he pardoned poor unfortunate men who had been sentenced to die. In the sympathy of his great heart, he could not under any circumstances permit the death of any man. It is related in Carpenter's "Six Months at the White House," that upon one occasion a member of Congress from New York, learning that an old neighbor had been condemned to be shot, called to see Mr. Lincoln. The guard would not let him pass. "I must see him said the congressman—it is a case of life and death." "But," said the guard, "he is in bed.' "I can't help it, I must see him." The guard

passed him and he went to Mr. Lincoln's room, found him in bed, and told him his friend was to be shot the next day. He pleaded with the great man until, at last, without rising from his bed, he signed a reprieve, saying, as he did so, "*I don't think shooting him will do any good.*" Many cases similar to this one are related of Mr. Lincoln when his great heart, filled with mercy and pity, went out towards the poor condemned soldiers under sentence of death,—and, though army discipline was at stake, he could not bear to have a soldier shot. With him it seemed to make no difference what the offence—his desire was to save men from disgrace and death. He could not listen to an appeal without exercising that sympathy which few men would have entertained placed in his position, and many men are now living who can thank Abraham Lincoln that their lives were spared.

It is the spirit manifested by Mr. Lincoln that is wanted in men to become advocates of the abolition of the death penalty: it is an outgrowth of those generous, sublime traits in men, which portend human sympathy, human love, —a portion of that Divine love which is so powerful and yet compassionate.

On the 1st day of May, 1872, the Legislature of the State of Iowa abolished capital punishment by passing the following act:

"CHAP. 137.—An Act in Relation to Capital Punishment and Regulating Pardons.

"*Sec.* 1. Be it enacted by the General Assembly of the State of Iowa: The penalty of death as a punishment for crime is hereby abolished.

"*Sec.* 2. All crimes heretofore punishable with death, shall be punished by imprisonment for life at hard labor in the State Penitentiary.

"*Sec.* 3. That in all cases of conviction under the preceding sections, the Governor shall not grant a pardon unless the same shall have been recommended by the General Assembly of the State.

"*Sec.* 4. This Act shall take effect from and after its passage and publication.

"Approved May 1st, 1872."

During the sitting of the Legislature, in the year 1876, an attempt was made to abolish this law and to restore capital punishment. The Society of Friends at once sent forward a peti-

See page 41. Chap 3.

March, 1883, upon the ground that the law of 1880 took away the power of execution, thereby undoing what had been done pursuant to the passage of that act, which reversed the judgment and discharged Mrs. Hartung from custody.

This woman was guilty of this murder, and she should have been punished. Her crime was the most heinous of all crimes, that of administering slow poison deliberately to an unsuspecting victim, and that victim her husband. But the feeling at that time was averse to the hanging of any woman; public sentiment ran high, and while it saw that she was evidently guilty, it abhored the scenes which would attend her execution. So strong was that sentiment, that the Legislature took the matter in hand, and, by its error in not abolishing the death penalty altogether, passed a law which the Court decided was *ex post facto*, and thus inoperative in the case of this poor woman. Had there been no attempt to change the law, the people at that time would have been called upon to witness the sad spectacle of hanging her by the neck until she was dead.

This celebrated case was before the courts and country for nearly four years, as she was to have

been executed on the 27th day of April, 1859, and was not discharged by the Court of Appeals until March, 1863.

As is well known, Mrs. Hartung was tried in the City of Albany before Judge Ira Harris and a jury. Judge Harris was an honorable, upright man, and an able judge. No one can fail to see, in perusing the proceedings in this case, that he was deeply impressed with the awful position in which this poor unfortunate woman was placed; and no one can fail to see, too, when they read the able charge made to the jury, he was sensitive under the responsibilities of the position he occupied when called upon to inflict the death penalty.

We have thought best to quote here a portion of the judge's charge in connection with the verdict of the jury, and let those who favor the death penalty say if there had been no law to authorize the execution of this woman, whether such a scene would have taken place upon that occasion of her trial. Doubtless, if she could have been imprisoned for life, the jury would have promptly convicted her.

The judge said: "The law gives to the accused the benefit of every reasonable, rational,

thought, should be forever excluded from society, and in solitary confinement pay the penalty of his awful crime. Such is the condition of the human heart in its depraved state, that the terror of the gallows seems to have no effect upon the confirmed criminal. For, with the sympathy of juries, through the technicalities of the law and the subtle acumen of counsel, there seems to be formed in the minds of most murderers the thought that there is by these devices a chance of escape from death; and by and through these devices many guilty persons do escape.

But with a solitary prison cell open before them, wherein they shall be confined during life, with no possible chance of liberty save what is proposed hereafter; with a proper restraint upon the pardoning power, it is certainly fair and reasonable to presume that juries would overlook many questions of doubt which now arise to perplex them in almost every case, and apply these doubts, if considered at all, unfavorably to the murderer, he would therefore be more certain of conviction, and the criminal classes would be far less numerous and dangerous than now.

The argument used by those who are opposing its abolition, is the old Scriptural idea recorded in the 9th Chapter of Genesis, 6th verse: "Whoso sheddeth man's blood, by man shall his blood be shed." Every prosecuting attorney upon the trial of the murderer, invariably pours this old Mosaic law in the ears of the jury. It has been the argument used to keep it upon the statutes of most of the States of the Union, and so effective has it been that, as we have said before, humane, wise men think it will be useless and highly improper to attempt its general repeal. It is pleaded in justification, by every one who thinks, that the man or woman who deliberately, with malice aforethought, takes the life of a fellow being shall pay for that life so taken the penalty of death.

There are many Christian people who assert that "*any man who kills another ought to be hanged.*" There are many ministers of the Gospel who preach what Paul taught when he said, "but the greatest of these is charity," who, in spite of such teaching, turn to the world and say, "*we must hang men who commit capital crimes.*" "The good of society demands it—even *Christianity demands it.*"

In the life of that good man, George Fox, who suffered so much for the cause of his faith in a religion which is so beautiful and so powerful, is found the following in opposition to the death penalty, which, we believe, states the established doctrine of the Society of Friends at this day: "The proper ends of punishment in all criminal cases are—*first*, to reform the offender; *second*, to deter others from crime; *third*, to obtain restitution or compensation. Society has no more right than individuals to execute vengeance upon its offending members. 'Avenge not yourselves,' 'says the apostle to the Gentiles,' 'but rather give place unto wrath.' 'Vengeance is mine, I will repay saith the Lord.'

"The death penalty can neither reform the criminal nor procure restitution,—of the three ends proposed it can at best effect but one, that is, to deter others from crime. How far it subserves this purpose has of late years become a subject of serious examination, and many reflecting minds have arrived at the conclusion that it tends to promote crime rather than prevent it.

"We may urge another objection to the death penalty that it is *irrevocable. If an innocent man suffers, society cannot restore him to life;* and it is well

known, that through the uncertainty of evidence, many such have been executed.

"A third objection is, that criminals often escape all punishment through the repugnance of jurors to find a verdict in capital cases; whereas, if the penalty were imprisonment, at labor, for a length of time proportioned to the offence, convictions would be more certain, and all the ends of punitive justice would be obtained."* What stronger argument can be adduced than this?

On the 20th day of September, 1876, in *The New York Commercial Advertiser*, one of the ablest and most popular of the evening journals of that city, appeared the following editorial:

"BARBARITY ON THE SCAFFOLD.—A man was hung in Canada yesterday, and when the black cap had been drawn over his palid face, and the executioner attempted to spring the trap, a chain broke and the trap refused to work. A sledge hammer was brought and five long minutes were taken up in forcing the bolt. During all this time—an eternity to him—the wretched man stood there, with a perceptible shudder of the frame at

* Janney's Life of George Fox, p. 463.

each stroke of the hammer. He must have suffered a thousand deaths in that time, under the barbarous torture of the law, and even the spectators found the sight inexpressibly horrible. Such scenes are brutal, and such a mode of death is a disgrace to our civilization. The accidents that have recently taken place in Canada, Great Britain and this country, show that it is *the method that is at fault,* and not the executioners. *Imprisonment for life, without hope of a pardon,* would be far better than the barbarities of the rope."

CHAPTER III.

The trial of Mary Hartung, who was indicted for the murder of her husband, Emeil Hartung, in the City of Albany, N. Y., by administering poison to him on the 10th day of April, 1858, was one of the most exciting that has ever taken place in this country. She was tried in January, 1859, and found guilty of murder in the first degree. She was sentenced on the 3d day of March, 1859, to be hanged on the 27th day of April of that year. On the 23d day of April —less than one week prior to the day her execution was to have taken place—a stay of proceedings was granted and she was not executed.

Her case was carried to the Court of Appeals of the State of New York, and that tribunal granted a new trial. This new trial was never had, for the Court of Appeals discharged her in

See page 42
between 32 and 33 back.

tion imploring the Legislature not to repeal this humane law, which had for four years been the law of the State. In it they said: "We believe we are not influenced by a sickly sentimentalism on the subject. Human life is the boon conferred by the Almighty on man, the pivot of his destiny for the present and the future. Who but the Divine author of life can assume the awful responsibility of extinguishing it? Let the misguided victim be surrounded by all the guards which the safety of the community requires, in the silent cell, where he could commune with God, the convict would have an opportunity for contemplation and repentance and could harm no one. The infliction of the death penalty is, we believe, not only an unwarrantable assumption of a prerogative that the State should not assume, but induces a demoralizing public sentiment and lacerates the feelings of a very large class of people. *Conscientious repugnance to the death penalty by many, we have no doubt, has induced the escape of guilty persons* upon whom the sentence of the law should have been visited, while there would be no hesitation in convicting a guilty party and sentencing him to his fate, where, if there was a possibility of his innocence ever being

made apparent, it would not be too late to meet out justice to injured innocence. We believe a class of persons who deserve severe chastisement by law, are those who impiously take the law into their own hands in an unauthorized and illegal manner; and we further affirm that we believe that if the law was more stringent against the sale of rum there would be less crime committed."

This petition is a merciful document that appeals to every heart, and places in a noble light the men who, by their love for God and sympathy for His created beings, are anxious to stop forever the murder of men by sanction of law.

"Conscientious repugnance." What man or woman living to-day, who has read the terrible tales of the scaffold, whose better nature has not revolted, and whose feelings of "repugnance" have not gone forth toward these terrible scenes of judicial murder? "Who but the Divine author," surely, has the power to extinguish human life? Who but our Father in Heaven has the right to condemn a being to die?

Willful murder is the greatest of all crimes, and, he who commits it, with malice afore-

well grounded doubt. It is an admirable feature of our law, that maxim, that an individual is always to be presumed innocent until guilt is established. Every jury is allowed to act upon this presumption; and if the guilt of the accused, in this case, is not established to *your entire satisfaction*, this presumption comes in, and allows you to say she is not guilty. It is the right of the accused, that she shall have the benefit of every reasonable doubt. But if, after considering the whole case;—if after a deliberate review of the testimony; if after considering the testimony in all its bearings,—if then your minds are led irresistibly to the conviction that the poison which produced his death was administered by the hand of the prisoner, that she is guilty of her husband's death, then, however painful to her, you have no alternative. The oath which you have taken, that a true verdict you will render, requires that you should pronounce her guilty. Gentlemen, I submit the case of this unhappy woman to your hands. Be merciful but just. Let your verdict be such that, in after life, when you reflect upon *this awful moment*, your consciencies will be at rest. Hold the balance of justice with an even hand.

"Give the accused the benefit of any reasonable doubt; but if you can find no such doubt on which your merciful wish can hang, then you must render a verdict of guilty. Gentlemen, the destiny of the accused is in your hands."

The jury retired to consider their verdict on Saturday, the 5th day of February, and on Monday, the 8th day of February, came into Court and submitted the following communication:

"The jury are willing and ready to admit that the prisoner is not innocent, but is guilty to a certain extent, but not as principal. We are divided on this question. Now, sir, they wish to know if they can render any other verdict than guilty or not guilty of the crime of which she stands charged?"

Judge Harris: "I see, gentlemen, the point on which your minds are laboring, and I feel bound to say this much to you, that I can conceive of no aspect of the testimony in this case which would warrant you in finding any other verdict than 'guilty' of the crime with which the accused is charged. There are cases where the testimony may warrant a conviction for a crime of an inferior grade; but in a case of this char-

acter—a case of poison—the accused is guilty or not guilty of the crime. While I am pained to say so, I am constrained to say that in this case a verdict of manslaughter would not be sustained by the evidence."

Foreman: "Some of the jury wish to know if the counsel for the prosecution and the prisoner would agree on a different verdict than 'guilty,' whether it could be done."

Judge Harris: "I suppose not. Counsel cannot agree upon a verdict of manslaughter, as was done in a recent case; but I feel constrained to say it would not be warranted by the evidence."

Foreman: "We wish further to state to your Honor, that it is utterly impossible for us to agree upon a verdict, either of 'guilty' or 'not guilty,' —we have tried and failed."

Judge Harris: "I would suggest under the circumstances—the jury having had their minds engaged with this last proposition,—whether it would not be advisable to retire for a few minutes, and look over the ground once more, after what has occurred in Court."

The jury then again retired, and after an absence of fifteen minutes, returned into Court again, with a verdict of "guilty," and the prisoner was sentenced to be executed on Wednesday, the 27th day of April, 1859.*

After a careful perusal of the above charge and the proceedings of the jury in opon court, can we not reasonably infer that so wise and able a man as Judge Harris was considered to be, would not, if he had had the opportunity, been an open advocate of the abolition of capital punishment? Can we not plainly see that the jurors in this case were opposed to the death penalty? Can we not see that there was manifestly a desire to find her guilty of the crime charged if any other punishment than death could have been inflicted? But the gallows stood erected before these jurors,—they could behold her struggling, suspended between heaven and earth; and thus shrank from a duty which was so solemn, and fraught with such awful consequences.

In all periods of history, we find cases wherein innocent men have suffered death for crimes

* Reported 4th Parkin's Criminal Repts., page 312.

which they never committed: men who, standing upon the scaffold, having protested their innocence to an unheeding people,—a people whose hearts had become hardened by the long continued scenes of judicial executions, and whose ears were then, as attention is now, turned away from the utterances of those who protest their innocence of the crime for which they are condemned to die.

In the year 1721, there lived in Edinburgh, Scotland, a poor hard-working upholsterer by the name of Shaw. He had a beautiful daughter. She was a young woman of great personal attraction, and, by reason of her father's position, she could not enter the society of the nobility or the aristocracy. Nevertheless, two young men of high birth fell in love with her. One of these young men—a licentious, dissipated man—her father desired her to marry. She protested, saying she did not love him, and under no circumstances,—not even to please her father, whom she loved as only a dutiful daughter can love a parent,—would she marry him.

By reason of her obstinacy and disobedience to her father's wish and request, he became very cruel in his treatment of her. Time wore on and

she bore his cruel treatment as long as she could, living a miserable life. Finally, this daughter one day was found in her room weltering in blood. A dirk lay by her side. She was not dead when found, and, before she expired, when asked by those around her who committed this foul deed, she said, "Cruel father, thou art the cause of my death."

He was arrested. Upon his shirt there was found, by the officer who made the arrest, a spot of blood, which the poor old man endeavored to explain. He was tried for the murder, convicted, and on the 17th day of November of that year, was executed for the supposed foul murder of his daughter.

The people of the city were greatly excited, because of the death of this young woman. And history states there was not one man or woman in Edinburgh who did not fully believe that the old man murdered his daughter. Approval of the execution was therefore general.

In August, 1772, the apartments formerly occupied by the Shaws were rented. The man who was to occupy them, in cleaning out the room in which the poor girl was first discovered

weltering in her blood, found in a cavity on one side of the chimney a piece of paper, folded like a letter. Upon examination it proved to be a letter written by this young girl, in which she stated, that by reason of her father's cruel treatment of her and because she would not marry the man of his choice, whom she hated, he had made her life miserable, and rather than submit to him, she preferred death. In this frame of mind she plunged the fatal knife in her breast, committing suicide.

But, ah! this evidence came—as it often has and will come—too late. The father had suffered death—had died, as he said upon the scaffold, using his own language, "innocent of the death of my daughter."

Sometime about the year 1800, there lived in a rural town in one of the Eastern States, a highly respectable family, consisting of father, mother, and an only child, a son. The boy's father being well to do and prosperous, gave his son every possible advantage in his power, and he grew to be a young man of promise. About the time he arrived at his majority, his parents both died, and he was thrown upon the world to fight its battles, as many a boy left in comfortable circumstances has been.

At this time there resided in the same town a young lady to whom he was engaged to be married. In the course of time, there sprang up between them some differences which became irreconcilable, and their engagement was broken off. The young man, disposing of his property, took the proceeds, left and finally arrived in a prominent Southern city. While in that city, he made the acquaintance of a young man from his native State, and after a brief stay they left together in pursuit of business in the interior. They reached a village and put up at a hotel, and while there stopping, they roomed and slept together.

Late one night, the companion of the subject of our sketch had occasion to leave the room. His comrade being fast asleep, of course, did did not miss him until morning. He wondered at his absence, with only part of his clothing, and at once gave the alarm. After a search he was found dead in the back yard. The landlord had the young man immediately arrested for murder. The murdered man's watch was found under his pillow, but no traces of his money, of which he had considerable, was discovered. Suffice it to say, that every fact and circumstance

pointed to the accused as the guilty party, and he was tried, convicted, and hung for the murder. Upon the scaffold he protested in lamentable and sad words, his innocence of the crime. But the law was carried out, and he died a felon's death.

This landlord moved away and finally reached Ohio. Twenty-two years passed away. He was at last taken sick, and upon his dying bed confessed that *he* committed this murder, and that he had also, during his lifetime, murdered seven others.

Many years ago, in the State of New Hampshire—and many of those who read these pages may recall this crime—the remains of a man were found cut in pieces, sewed up in a bag, and hid in a piece of woods. An old miser lived in these woods. He was known to possess a considerable amount of money, and was also known as a very eccentric person. People in the vicinity who knew him identified the remains as those of the old miser. There were living in the same town two brothers, who were desperate characters, and for years had been a terror to the neighborhood. They acted in a suspicious manner, and were finally arrested, and after a long trial were convicted *upon circumstantial evidence* and remanded to jail for sentence.

The same day, or the day before they were to be arrainged for sentence, the old miser walked into the town where those brothers were confined, to the consternation and surprise of every body.

Now, these men had been proven *guilty* of the murder of this old miser—guilty to the entire satisfaction of the judge, the jury, and the people of the community in which they were arrested! And if it had not been for the Providential return of the supposed murdered man, two innocent men would have been hurled into eternity for a crime they never committed.

Another case of rescue from the gallows may be cited here, as being one of deep interest and very pertinent to our subject.

John P. Phair was convicted in the year 1876 of the murder of Anna Freese, at Windsor, in the State of Vermont, and was sentenced to be hung at that place on the 6th day of April, 1877. Every preparation had been made by the Sheriff for carrying out the sentence, and the prisoner was preparing to meet his fate. He had asserted his innocence from the very hour of his arrest. Every effort by his friends and the

clergyman in attendance upon him, had failed to draw from him a confession. His declaration was: "I am innocent; if they hang me, they hang an innocent man." Finally, all was in readiness, and the hour for his execution had arrived within thirty minutes of the appointed time. Suddenly, there was handed to the Sheriff the following dispatch:

"'Delay execution of John P. Phair until May 4th, next,—written reprieve will be sent by mail.'

"HORACE FAIRBANKS."

Immediately the dispatch was conveyed to the prisoner. It was too much for him; the poor victim at once broke down and wept bitterly, as only an innocent, condemned man can weep when his life is spared as he stands under the shadow of the gallows.

This case of Phair was a peculiar one. He, too, was convicted of this murder by not very strong circumstantial evidence. In Vermont, a reward in amount commensurate with the heniousness of the crime is generally offered by the Town, County, or State, for the detection and conviction of the criminal. The law of the State

does not limit the amount of such reward; the purpose being to detect the perpetrator of the crime. At once the detectives are stimulated to action, and every effort is made to arrest, convict, and obtain the reward. If they are unsuccessful in ferreting out the guilty—the reward being generally large—the inducement is for them to weave a net of circumstantial evidence around one whom they think may be most available, and convict him. Certainly there can be but one construction of this practice or law, and that is, it places a premium for the conviction of the guilty, and an inducement—in the hands of bad, unprincipled detectives—to convict the innocent also.

A reward of two thousand five hundred dollars was offered for the conviction of Miss Freese's murderer. This amount was sufficient to induce the detectives to weave around some one a net of evidence, if not positive, probable, augmented by circumstances either directly or indirectly bearing upon the question of guilt, and Phair was selected.

But, "man proposes and God disposes." A portion of the Press, as well as many intelligent people of the State, prior to his trial, deemed

the evidence upon which he was held of too circumstantial a character to warrant a conviction. Nevertheless, he was convicted, and when there came a probability of his innocence being established, the people and the press began to cry out against the system of inducing detectives to create evidence, which endangers the liberty of every man, and has a tendency to convict the innocent as well as the guilty.

This poor man is not the only one who has been the victim of this law, and brought nigh unto the gallows by the detectives working more in the interests of rewards than justice, by having woven around them a net of circumstantial evidence. No wonder that the people and the press of Vermont cry out against this. And yet, strange to say, they advocate the death penalty, in the face of all the horrors and evils which are known to be the result of such a system.

In order to give the facts and circumstances of this case, we take the privilege of inserting the following account which appeared in the *New York Times*, of April 7, 1877:

"BOSTON, April 6.—The sensation of the day here is the reprieve of John P. Phair, at Wind-

sor, Vt., and how it was brought about. In the forenoon Mr. M. D. Downing, of this city, after reading the statement of Phair, published in the morning papers, in his office, on School street, jumped out of his chair and exclaimed, 'My God, they have got the wrong man. This man is innocent.' His words and excited manner astonished his associates, and as soon as he became calm he stated that he went to Providence on the morning of June, 1874, and returned upon a train which left Providence in the forenoon and reached Boston about noon on that day. His memorandum book was referred to at once, and the time was found to be correct. On that train, coming to Boston, he met and talked with a man whom he firmly believed to be Phair, and on reading the statement of Phair he saw how important a link he might possibly supply. Mr. Downing left Boston by the early train, and came back in the forenoon, as stated, being anxious to keep an appointment with a gentleman in Boston, in the afternoon, on an important business matter. Stepping into the smoking car at Providence, he rode in that until he had finished a cigar. The man whom he now supposes to be Phair sat in a seat alone.

Taking a seat by his side Mr. Downing soon entered into conversation with him. The man said he hailed from Vermont, whereupon Mr. Downing, who himself was born and raised in Vermont, inquired what section the man was from. 'I am from Rutland,' said the man. 'I came down yesterday and tried to get work of the Screw Company in Providence, but it is so dull I could not, and I am going back to Rutland.' This led to further conversation. Mr. Downing was in a line of business in which he employed a great many agents, and being favorably impressed with the man's appearance, and his evident intelligence, he told him if he did not find any work, he had better take an agency for Rutland and vicinity for his goods. The idea did not seem to impress the man favorably, so the subject was dropped. Neither knew, or inquired the name of the other. They talked on general topics and separated. Mr. Downing paid no particular attention to the murder or the trial, and read neither. Of course he could not have known that Phair was the man he had met, nor had any circumstance or event called the matter to mind until he read Phair's statement yesterday. Thinking it very improbable that

two men had left Rutland June 9, 1874, and applied to the Screw Company for work, and took the same train for Boston June 10, 1874, he concluded that Phair might be the man. When he had reached this conclusion it was nearly 12 o'clock, and Phair was to be hanged in about two hours.

"Burdened with the thought that he might possibly be able to furnish evidence that would go a good way toward proving his (Phair's) innocence, he immediately started to find some way to let the Governor of Vermont know of his impressions before it was too late. He rushed into the *Globe* office and told his story. The manager deemed the intelligence of importance, and thought the least that could be done was to telegraph Gov. Fairbanks, of Vermont, of the facts, and let him act as he chose in the premises. After talking the matter over, both started to the telegraph office, and sent the dispatches to Gov. Fairbanks, appealing to him to stay proceedings. An attempt was made to forward these dispatches immediately, and it was found, to the dismay of all three men, that it was the dinner hour of the Montpellier operator and he was out. Then word was immediately sent to all

the Vermont offices to ascertain if the whereabouts of the Governor were known. The hanging was to have been at Windsor, and of course the Governor had got to be found in time to communicate with Windsor, if he desired to do so. Meanwhile the moments were passing away with what seemed lightning-like rapidity. Half-past 12 and 12:45 came. Still no word from Vermont. A dispatch was then sent to the Sheriff a little before 1 o'clock. Still no word from the Governor, and the moments were full of suspense and anxiety. It had become very exciting in that telegraph office.

"Finally, at 1:14, word came that the Governor, almost providentially it seemed, was in the telegraph office at St. Johnsbury, and had received the dispatch. Then came the rumor that he had granted a respite for one week. A little later it was known that, on receipt of the dispatches, he at once telegraphed a reprieve to Windsor until May 4, thus giving ample time to fully investigate the information of Downing, and give the condemned man the benefit of the doubt. Then the telegraph office became useless for the time being.

"Mr. Downing is a gentleman of standing here, and seeks nothing but to aid in clearing up a dark matter. The telegrams from Vermont report a great reaction there in favor of the accused man, and this providential circumstance may save his life."

On the second day of May, Governor Fairbanks respited Phair until the first Friday in April, 1879: giving nearly two years' time for him to prove his innocence.

This action of the Governor is explained by the fact that there is no power given the courts of that State to grant new trials in cases, when there is conviction for murder in the first degree. The remedy is by special legislation, giving the court such power.

Like the cases before quoted, this man had been proven guilty, and the court and jury were satisfied of it. But in the Providence of God he was saved from the gallows; and, it may be, will go forth from his cell a free and innocent man.

We might go on and cite case after case as strong as those we have given herein, for there are many cases where innocent men and women have suffered by reason of mistaken identity.

We do not believe our cause needs to be strengthened by a description of such cases, either of the past or present. We believe it to be a merciful and just one, and therefore submit, to any fair and candid minded person, if these cases do not bear powerfully in our favor.

The fact that innocent men have been hung in all ages, and will be hung in ages to come, if capital punishment continues to exist: the fact that men in the past have and in the future will be called upon to give up innocent lives and suffer for the guilty, clearly, forcibly, and conclusively sustains the position we take—that the abolition of capital punishment is an imperative necessity. It proves clearly that a law, *as all know*,—and which no one can deny,—that punishes the innocent as well as the guilty with death, is a law of intolerable oppression.

"THOU SHALT DO NO MURDER." Who shall "do no murder?" *No man, no woman*, State or Nation, by the sanction of law.

CHAPTER IV.

One of the important privileges given to all criminals is the right of trial by jury. This right has existed as far back as any traces of history can bring information of those nations which adopted the feudal system. The constitution of the United States guarantees a trial by jury in all criminal cases, except in cases of impeachment.

Trial by jury was originally secured in England by Magna Charter. Blackstone says: "Some authors have endeavored to trace the origin of jury trial to the ancient Britons, but the law seems to have been lost in the obscurity of the middle ages."

Again, Blackstone says: "In Magna Charter it is more than once insisted on, as the principal bulwork of our (England's) liberties, but especi-

ally by Chapter twenty-nine, that no freeman shall be hurt in either his person or his property." This was created because "the ancient ordeals of red hot iron and boiling water, practiced by the Anglo-Saxons, were the methods to test the innocence of a party accused of crime," —a barbarous usage that "gave way to the wager of battle in the days of the Normans—a practice that fell into disuse in the thirteenth century, when Henry the II. introduced into the assizes trial by jury."*

In the constitutional convention, held at Kingston, New York, on the 20th of April, 1777, it was declared that: "This convention doth further ordain, determine, and declare, in the name and by the authority of the good people of this State, that trial by jury in all cases in which it hath heretofore been used in the colony of New York, shall be established and remain inviolate forever."

Often do we find jurymen, who under oath have passed upon the life of some victim, consigning him to the gallows, step from the jury box, and gladly sign a petition asking the par-

* 1st Bouvier's Law Dic., page 770.

doning power to pardon the one they have convicted. Why do they do this? Because the hard and cruel law gives them no choice under oath, in the face of evidence conveying guilt, to say by their verdict that the accused shall not be hung. But they *can* say as citizens that they do wish a pardon granted and are ready to exercise a christian duty toward a guilty fellow being whom they have convicted.

One of the most eminent jurists who ever lived, in writing of jurors, says: "Some minds are so skeptical that they receive nothing as true which is not proved by plain and direct evidence, or established upon mathematical demonstrations; while others readily adopt the most absurd notions though unsupported by anything like evidence, and destitute of all foundation in reason or the nature of things. And we not unfrequently find the opinions of the latter class as immovable as those which are the result of the most laborious investigation."

It has been claimed by men of great ability and legal learning, that the average juryman in this country is not fitted for so momentous and important a position as to sit upon murder trials and give judgment upon the life of a fellow being.

Curran said, "it was of the utmost importance —it was imperative for the good of society, for the good of the king—that no man should serve as a juryman in any branch of the criminal law unless he was the owner of real estate." It was in this way, he claimed, the jurors became more interested, more capable of assuming the duties of a juror; and although he might, to a certain degree, be unlearned, yet, sitting as an arbitrator between the king and a subject the king was seeking to convict of any crime that would, if found guilty, send him to the guillotine, he was better fitted for a juryman's duty.

The wisdom displayed by and through the jury system of our country, in the trial of criminals, is of great value both to the prisoner and to the people. Our law has wisely placed this mode of deciding the fate of every person charged with crime in the hands of twelve men. While there is exercised much care in the selection of jurors, who serve in capital cases, we claim there is not taken that degree of caution there should be in obtaining for our criminal juries, men who are really honest, intelligent, and thoroughly impartial in their opinions.

We arraign prisoners for murder in our Courts of Justice, and confront them with those who are to become their judges and say whether they shall live or die. They are asked to consider them innocent until they are proven guilty. But how often, for want of proper intelligence and unbiased feeling, are men found in the jury box who ought never to be there? We need not mention here the fact that there are, too often, brought to bear upon jurors arguments utterly at variance with the facts by the prisoner's counsel in order to obtain a verdict of acquittal. How often eloquent lawyers depict the awful scenes upon the scaffold, and draw sad pictures to work upon the sympathies of the jurors, for the purpose of obtaining either an acquittal or a less degree of punishment than attaches to the offence charged in the indictment. This is, we claim, the inevitable result of the enforcement of the death penalty. No juror would for a moment—in the light of facts sufficient to convince of guilt—allow his feelings to be influenced by any power brought to bear upon him if there was no such method as hanging. It is the "awful responsibility" of taking from a human being a life by their verdict, that makes jurors

seize upon the most trifling pretext as an excuse to either acquit or spare the life of the criminal.

Stand in any court room and look into the faces of jurymen empanelled to try a murderer, and is it not true that, in almost every case, we can discern men sitting in the jury box unfitted for such an important and solemn position? Can we not see men who, by their very countenances and general appearance, are utterly incapable of grasping those questions which may call for calm, cautious, unbiased, and deliberate opinions, upon which the fate of some poor unfortunate man or woman may hang? Then, again, we see there men who show in their faces unmistakable evidences of the "awful responsibility" of being compelled to perform such an unpleasant duty.

But we do not propose to follow this subject —fraught with so much importance—any further in this connection. We turn to sadder scenes, and point to the gallows—point to that place where men and women are called upon to surrender that life which we claim none but God has the right to take.

We present the account of the execution of a poor condemned man, which was taken from

The New York Evening Post, of the day named therein, and ask Christian men and women—who must shudder at such sad scenes—to consider this case carefully, and answer the question, "Does not humanity demand a repeal of the law executing men and women?"

"THE GALLOWS.

"THE EXECUTION OF LINDSAY—HIS PROTESTATION OF INNOCENCE ON THE GALLOWS.

"*Syracuse, February* 11, 1876.

"Preparations for Owen Lindsay's execution, at the Penitentiary, were made yesterday afternoon. The gallows was the same which was used at the hanging of Fralich here, Ecker at Fonda, and Smith at Watertown.

"Lindsay's daughter spent several hours with him, and his wife, father, and other relatives were with him much of the time during the day. The *final interview* with his family took place at nine o'clock this morning; it was very affecting. Lindsay protested his innocence, and expressed no fear of the hereafter. He summoned his own pastor, the Rev. William Manning, of Rochester, who last evening administered spiritual consolation, and besought him not to die with a lie

on his lips, and to tell the whole truth; but frequent beseeching only brought forth the assurance that he was innocent.

"Vader, the accomplice, on whose testimony Lindsay was convicted, stoutly reiterated the entire truth of his evidence. The prisoner made arrangements for the temporary lodgment of his body at Oakwood vault, and for a quiet burial at his old home in Lysander, at a future time.

"At the parting with the superintendent of the Penitentiary and others, the prisoner asserted his innocence, bursting into tears. The prisoner did not go to bed during the night, but chatted familiarly with the officers and reporters.

"At a quarter to seven o'clock this morning, he retired, and slept one hour, when his wife awoke him. He was allowed two hours with his family. At twenty minutes to ten the sheriff ordered him to prepare for the last scene. He dressed himself carefully in a suit of black. The death warrant was read to him by the sheriff, and a brief prayer was made by the Rev. Mr. Manning.

"At half-past ten the black cap was drawn over his face: one minute later the rope was cut and the body fell. He died in ten minutes.

"*When standing under the gallows*, Lindsay said, in a firm tone of voice: 'I am innocent, gentlemen, of the crime; I know nothing of the matter whatever; I never had a lisp said to me in regard to it in the world. I am as innocent of this crime as any man in this company. *I am innocent before man and God.*'"

Here was a man convicted upon the testimony of an accomplice, and as he stood upon the scaffold—yea, upon the very threshold of eternity—he proclaimed to the world he was about to leave, and in the presence of the God before whose bar but a short time would elapse ere his spirit was to appear, "I am innocent before man and God." But the sheriff, in obedience to the law of New York, launched him into eternity, and almost before the sound of the poor culprit's words of protest had died upon the ears of his hearers, he was dangling in the air, giving up it may have been an innocent life to satisfy the justice of the law.

Must we listen to such dying declarations as these, and heed them not? Must we be empowered by law, at the same moment they are uttered, to launch the soul of the being who utters them into eternity?

This is the question to be answered by the people of this Christian land. The day draws nigh for the answer.

At an execution which took place in Massachusetts, during the spring of 1876, the prisoner, —after he had been placed upon the scaffold, and only a few moments before the State, by the authority vested in it by law, had hanged this man—raised his hand, and with his face turned heavenward, said: "I declare to all men that I die innocent of willful murder; I die cherishing no feeling of resentment toward any one; I die forgiving all the world for any wrong I have received. It is hard, but I freely do it." To his counsel he said: "Try and keep track of this matter. I hope that in time, and I am assured, that it will be cleared up. I feel that in six months men will say, '*If we hadn't hanged that man we shouldn't.*'"

And at the same time the Minister of the Gospel who administered to the poor fellow spiritual consolation, made the following prayer, as the sad act was about to be consummated: "O God, we confess Thy power and wisdom and Thy mercy. Thou art our Creator and the Creator

of this man, who is so soon to meet Thee. *Bless the State that, for safety and security, is about to perform this solemn and awful act. Have mercy on this man. Meet him now and conduct him to Thyself. For the sake of* JESUS CHRIST, OUR SAVIOUR. Amen. Amen."

Sent by the State out of this world! What consolation can there be to the people in such a prayer for the soul of the murderer invoking the Divine presence in the face of such scenes?

Ah! how true is the language, "*If an innocent man suffers, society cannot restore him to life.*"

These two men were presumptively innocent. We do not question the purity or the motives of those who were the jurymen, or the judges who presided over these trials. They had solemn duties to perform and were undoubtedly convinced of the guilt of the condemned. But it is the law that is at fault. We say, that in view of the scenes at these two scaffolds, and the protestations of innocence there made, it was murder by the State when the hangman's rope was placed around the necks of these two men that, in the twinkling of an eye, took the lives which God had given them.

Surely society cannot return to them their lives, and upon the State may be the blood of at least one innocent man.

As we have said, we find most men who wish to keep these statute laws in force, after having been driven to the wall by the powerful battery of *charity*, flee to the Bible, and there endeavor to find Divine authority and argument to sustain their theory. First, they go to the old testament, and take the Book of Genesis, as we said before, and quote the 6th Verse of the 9th Chapter, "Whoso sheddeth man's blood, by man shall his blood be shed." Then, to the 20th Chapter of Exodus, 13th Verse, and there find, "Thou shalt not kill." Then, to the 24th Chapter of Leviticus, and the 17th Verse, "And he that killeth any man shall surely be put to death." These passages, quoted as they are, seem to make a strong case for capital punishment. But taken in connection with others, and the meaning that we put upon them, fail utterly, viewed in an intelligent light, to prove that God in His goodness intended after Christ came that this punishment should be continued.

Against these, therefore, we have the New Testament teachings founded in love, and the

most severe Divine decree for the punishment of murder that can be found therein, is found in the 21st Verse of the 5th Chapter of Galatians, where Paul says: "Envyings, murders, drunkenness, revelings, and such like: of the which I tell you before, as I have also told you in time past, that they which do such things *shall not inherit the Kingdom of God.*"

This was to be the Divine punishment of the murderer. After Christ came he was to be disinherited and excluded from the Kingdom of God. This language was from Paul by authority as a minister of Jesus Christ, and is so plain that the most prejudiced mind must recognize it as conclusive. It was not modified nor gainsayed in any way, or at any time. Love was to be cultivated, charity inculcated among the people. And this doctrine was reaffirmed, as found in the 22d Chapter of Revelation, 15th Verse: "For without *are* dogs, and sorcerers, and whoremongers, and murderers, and idolaters, and whosoever loveth and maketh a lie." These were crimes which shut men out of the Kingdom of God. It does not appear that sorcerers and idolaters were to be cast out and murderers executed. Not at all. The same

Divine punishment was to be meted out to the whole of this class of criminals. Thus we find that these are the only two passages in the New Testament where the punishment of the murderer is alluded to in emphatic terms.

If it had been Christ's intention to perpetuate the doctrine taught in the time of Moses—the shedding of blood for blood—He would have said so in so many words while upon earth. As the great teacher of mankind, he would undoubtedly have commissioned some of His apostles to have proclaimed it and caused no ambiguity to exist upon this point. He expressly said, "Thou canst not make one hair white or black."

In the old scriptures there was no hanging for the crime of sorcery or idolatry. These were great crimes, great as murder, as defined by the New Testament, for we find them spoken of in connection with murder. Hence we can infer that no Divine right was intended to be given to man, whereby he was to exercise the power over the life of his fellow. What did our Saviour mean, when He said, "Father *forgive them*, for they know not what they do?" We believe He meant to abrogate that law which was so cruel

in the time of Moses, and which through ignorance, sin, superstition, and a love for bloody retaliation, followed down the line of ages until now it is the doctrine still unhappily in existence in modern times. Aye! He meant more. He meant to proclaim to the world charity, mercy, love, forgiveness: *all* that is so noble, so sweet, and so holy in His divine nature.

It is asserted that if the law of capital punishment were to be repealed, solitary confinement would not be a sufficient terror to those who commit murder; that the gallows presents a horror which nothing else can. This, to a certain extent, is true. But, aside from any consideration of mercy, is not solitary confinement during the natural life to be dreaded more, when it is fully considered, than the prospect of being executed, taking into account the chances of escape which surrounds the one and does not the other?

We know that the life of the murderer is as sweet to him as that of any being, and that nine out of ten would, if given the opportunity, prefer the sentence of solitary confinement to that of death. But such a confinement is a very different and more severe sentence than that of hard labor for life, which the prisoner will fully

realize when he comes to experience it, for to be placed in solitary confinement for life, without hope of escape,—shut out from the world and virtually dead to it—would become more dreadful than the hangman's rope.

Recently a woman in the State of Ohio, who had originally been sentenced to be executed, and such sentence without any solicitation on her part at the time, had been commuted to imprisonment in solitary confinement for life, appealed to the courts to be allowed to go forth from prison and be executed. She had for some years suffered such confinement, but as time passed she became weary of such a life, and preferred death to it: it was worse than death, and she was willing to give up her life rather than suffer the torture of mind throughout a hopeless future. The Court is now considering her case, and the people of this country are anxiously waiting to see the final result. Thus we see, in one case at least, that our point is sustained, and fully believe, that if solitary confinement was the penalty for murder instead of death, it would be as great a terror to the murderer as the gallows.

CHAPTER V.

The plea of insanity, in cases of murder, has become one which is seriously troubling the ministers of justice. The fact that so many murderers escape punishment by reason of well conceived and deep laid plans to feign insanity, is bringing our law-makers to consider how they may so frame laws as to reach each particular case. Guilty men escape the gallows, who have successfully pleaded this absurd and deceptive theory of a temporary insanity, caused many times by the advice of unscrupulous lawyers who conduct their cases. The courts are constantly annoyed by the cunning of this class of criminals, and jurors are perplexed, mystified, and too often deceived by this feigned insanity, until the course of justice has sunk, in many States,

into opprobrium. How often is the question asked, as murderers are acquitted because of the plea of temporary insanity, "When are our already overburdened Courts of Justice to be free from this class of cases?" We answer not until the law of capital punishment is abolished, and this class of men who dare to act as only guilty men can act to save their necks from the halter, are made to know that to commit a murder *and at once* become insane, is a thing that neither the courts, juries, nor society will tolerate.

We wish to give a case in point, which occurred in the State of New Jersey in 1875. A man of prominence and respectability walked into the office of a rival editor and deliberately shot him. The victim, after lingering for nearly a year, died,—soon enough to make the crime murder in the first degree by the statute of New Jersey. The man who committed this deed was brought to trial, and the only defense which could be pleaded with any degree of success was insanity. If one day before the shooting of his rival, he had been charged with being insane, he would have taken it as an insult. Yet the jury that tried him, to the astonishment of almost everybody, acquitted him on the ground

that he was actually insane when he committed the act. Does any one suppose that, had there been no law to hang men in New Jersey, he would have been acquitted when the shooting was admitted to be really without cause? Not at all; for no man was ever more guilty of murder than he.

Yet the jury, like hundreds of juries before this one, gave him the benefit of existing doubts, and left him loose upon the world. What happened afterwards? One week after his acquittal, a commission of physicians and another jury were selected according to law to ascertain if he really was insane. This commission unanimously said he was not, and he walked out a free man to enjoy the comforts of life. Justice again mocked, because the sympathies of jurymen would not let them hang a fellow-being upon testimony which, if he could have been imprisoned for life, would have placed him in the State prison.

Now, we often see the fact demonstrated that the death penalty works damage to society, and wrings from justice her subjects. We see demonstrated that juries will do anything conscientiously to save a man from the gallows. We

see guilty bad men turned loose upon society, and human life becoming, as it were, a plaything to these wretches.

Therefore, when we reflect upon these important facts, what can be more evident and true than this: that the welfare of the people, as well as christianity, demands the abolition of capital punishment.

How many sad spectacles of crimes eminate from the curse of liquor? How many men have been sent upon the scaffold for committing murders when they were drunk, and, therefore, *non compos mentis.*

Drunkenness has been defined by many eminent jurists to be a species of madness, or "*dementia affectata.*" The law holds the drunkard who commits murder to the same responsibility as if he were perfectly sober, and knew what he was doing. It is a rule of common law, that drunkenness is no excuse for murder. When the poor forsaken Reynolds a few years ago awoke in a cell in the Tombs of the City of New York, from a drunken debauch, and was informed that he had committed an atrocious murder, he was horrified, for when it was committed he was mad from liquor and knew nothing of it.

And when he subsequently exclaimed through the grates of his cell door, in his delirious condition, partially in jest and partially crazed with fear, that "hanging was played out in New York," a new thirst for the blood of murderers at once seized the people, and thus capital punishment seemingly found a justification all over this land.

We do not crave any sympathy for the drunken murderer. The cause of his maddened condition when he commits a murder under the influence of liquor, is self-inflicted, and, therefore, he is responsible, and should suffer the consequences of his acts.

Very many readers of this work will remember the celebrated case of Henrietta Robinson, the veiled murderess. She was indicted for the murder of Timothy Lanagan by poison. The defence was drunkenness; that at the time she administered the poison from which he died, she was intoxicated, and hence irresponsible for her act. She was ably defended, and nothing that could be done was left undone in the attempt to obtain for her an acquittal. But all efforts were futile, for she was convicted of murder in the first degree.

This trial took place in the City of Troy, New York, before Judge Harris, in the month of May, 1854. The whole country became excited over it. Like the Hartung case, it involved the life of a woman, and the eyes of the public were again turned upon a case where a woman, if convicted, would be hanged.

Again, to prove that Judge Harris was an implied opponent of the law of capital punishment, we quote briefly from the able charge he delivered to the jury in this case. He said: "It is but once, perhaps, in the course of a man's life, that he is called upon to decide the fate for life or death, of a fellow-being, when, in the impressive language of the ceremony which initiates you into your office as jurors, the *life of a fellow creature is given in charge to twelve men. The prerogative to determine life, belongs to the source of life itself. It is the highest power that man, himself the subject of mortality, can exercise, to assume this prerogative and declare the life of his fellow man forfeited. This fearful responsibility rests upon you.*" * * * * "With the *policy* or *wisdom* of the law which demands life as the penalty of crime, neither you as a jury or we as a Court, have anything to do. *Were we sitting as legislators, it might become us to*

express our opinion on this subject; but placed here, as we are, to administer the law, it is our duty to take it as we find it."

Sustained by the common law of this land, and by the statute law of this and most of the States of this Union, Judge Harris, in charging the jury upon points of law, said: "That if the prisoner was intoxicated, even to such an extent that *she was unconscious of what she was doing*, still the law holds her responsible for the act." * * * "Her self-inflicted insanity must not be allowed to avail her. The law imputes to her a murderous intent."

Thus it becomes an established fact, supported by law, that capital punishment is enforced equally against the miserable wretch who commits murder when not himself, and knows not what he does, whose faculties and senses are paralized, whose better nature is overcome by the evil in him, brought out and maddened by liquor, as against that murderer who, in the full possession of his faculties, premeditatedly, wickedly, intentionally, commits a murder with full knowledge of what he is doing and what will be the inevitable consequences of his awful crime.

The *Christian Union*, in a recent able article on

capital punishment, thus deals with it: "The effect of the wearisomely repetitious discussion of this subject has been steadily to weaken and to nullify the once popular arguments for capital punishment. The gallows, a more savage relic of barbarism than the whipping-post, is defended *only* by a traditional conservatism, and a sentiment of vengeance. The Biblical argument is abandoned. The fact that Moses in the wilderness, where prisons were impossible, prescribed the death penalty for aggravating crimes, is no reason why it should be maintained in a settled Christian community after three thousand years development. The argument from necessity never deserved respectful consideration. To say that the people of the State of New York are incapable of protecting themselves from a single murderer except by strangling him, is to deny their competence to deal with the simplest problems of civilization. The argument of justice is specious but unsound." * * * * * "The supposed deterrent influence of the gallows is not substantiated by the facts of history. Crime has steadily decreased with the decrease of capital punishment; and it surely devolves upon the advocates of the death penalty to show that the influence of terror

which has not been adequate to deter men from small crimes, will deter them from greater ones."

One of the important, and probably the most serious question to be decided in connection with the abolition of capital punishment, is, what method of punishment is the best to be proposed for the convicted murderer? We say, "IMPRISONMENT IN SOLITARY CONFINEMENT FOR LIFE." Then put the pardoning power under the combined control of the Governor and the highest judicial power of the State, which shall constitute a Court of Pardon, forbidding it hearing or receiving a petition for the pardon of any murderer under sentence for life, for the space of twenty years or more, as may seem just and proper, unless there is positive proof, to the satisfaction of the Court of Pardons before which such petition shall be presented, that there is newly discovered evidence, or upon the confession of some person who did commit the crime for which the petitioner is serving a life sentence. In this way there could be no fraud or deceit practiced by the criminal, because, if a confession should be made by one that he committed the crime, he would stand in the place of the already condemned; if by newly

discovered evidence, the Court of Pardons should be fully and *unanimously* satisfied that a new trial could be had with safety, or a pardon granted to the accused. Thereby justice to criminals would be meted out, society and the State be fully satisfied and protected, and the murderer in his solitary confinement, if guilty, could in agony exclaim—

> "'Tis dark, 'tis cold, and hung with gloom,—
> How can I in this dungeon stay?"

As yet no State has enacted a law that is what it should be. Among those which have abolished capital punishment, the best law, probably, is the one passed February 21st, 1876, in the State of Maine. We insert this law in full, believing that if it can be read generally by the public, it will have a tendency to eradicate the prejudice of very many upon this highly important subject.

"CHAPTER 114.

"AN ACT TO ABOLISH THE DEATH PENALTY, AND TO REGULATE THE MANNER OF APPLYING FOR PARDONS IN CERTAIN CASES.

"*Be it enacted, &c.*, as follows:

"*Sec.* 1. The penalty of death, as a punishment for crime, is hereby abolished.

"*Sec.* 2. All crimes now punishable with death, shall hereafter be punishable by imprisonment at hard labor for life.

"*Sec.* 3. Whenever any person who has been sentenced under the second section of this act shall desire to obtain a pardon, or a commutation of such sentence, he may present a written request to the Justices of the Supreme Judicial Court, in term time or vacation, asking that application therefor be made to the Governor in his behalf, and shall therein set forth, specifically, the grounds on which such application for pardon or commutation of sentence is requested, and the facts which he expects to prove in support of the same, together with the names and residences of the witnesses by whom he expects to prove such facts; and with such request he shall present the affidavits of such witnesses, and a copy of all the evidence taken at the trial in which he was convicted, which evidence shall be taken and preserved as provided in section seven, Chapter one hundred and thirty-five of the Revised Statutes.

"*Sec.* 4. If, upon examination of said request and the affidavit therewith presented, said justices shall be of the opinion that new and material

evidence has been discovered, which was not known, and could not, by the use of due diligence, have been obtained at the time of the trial, they shall appoint a time and place for a hearing thereon, and order notice to be given to the Attorney General and to the County Attorney of the county, in which said person was convicted, that they may appear in behalf of the State.

"*Sec.* 5. At such hearing no evidence shall be deemed pertinent, except such as has been discovered since the trial, and such as relates to material facts, tending to show that such person was wrongfully or erroneously convicted, or that he is innocent.

"*Sec.* 6. If upon all the evidence said justices shall be of the opinion that such person was wrongfully convicted, or that he is innocent of the crime of which he was convicted, and that an application should be made for his pardon, or for a commutation of his sentence, they shall so order, and thereupon the clerk of said court for the district in which said hearing is had shall make up a record of the proceedings had on such request, and transmit a copy thereof, and of all the papers in the case, to the Governor,

together with an application to the Governor, made by him in behalf of such person under the order and direction of said justices, for such pardon or commutation of sentence.

"*Sec.* 7. On receipt of such application, the Governor may, with the advice and consent of the council, grant a pardon, or a commutation of sentence, upon such conditions and with such restrictions and limitations as may be deemed proper, and to carry the same into effect may issue his warrant directed to all proper officers who shall serve and obey it.

"Approved, Feb. 21st, 1876."

As we said before, those who favor the death penalty plead in its defence the Divine right to execute men. We remember that for more than two centuries human slavery in America was defended by its ablest champions as a Divine institution, existing by Divine right. We know that Brigham Young and his fellow polygamists defend polygamy upon passages selected from the Bible quite as relevant as those selected in defence of capital punishment: that they claim it is an institution which existed before the Christian religion, and is worthy of acceptation. We know that every bigamist, when arraigned

in our courts for bigamy, can plead the same Divine authority in support of his crime. He can open the Bible and point to the career of King David—one of the grandest characters of the Old Testament—with six wives, and can point to King Solomon with eighty wives and concubines. These instances, he declares, should be regarded as very strong biblical authority for a plurality of wives.

If slavery, polygamy, and bigamy are in contradistinction to the tastes and religious sentiments of an intelligent and enlightened people, is not the execution of human beings for the crime of murder equally so? The Divine right to execute human beings is no greater than that which exists for slavery, polygamy and bigamy.

What is asked in this matter is consistency. The American people abolished slavery against the strong deep rooted prejudice and opposition of a majority of the people, because it was inimical to the religious and moral sentiment of the nation. They demand that polygamy shall be wiped out, because it is loathsome and a curse to society and the nation. Society is protected by the enactment of stringent laws for

the punishment of bigamy: it demands that such laws shall be faithfully and rigidly executed; yet men say we must not abolish the death penalty, because it is the only safeguard against an increase of the crime of murder. We say this is erroneous.

For one moment let us pause and look upon the awful scenes enacted upon the platform under the gallows. There stands a condemned human being—a man created in the image of his God—a man in the possession of a life that only his Father in heaven can give—a life that no human law should authorize any power to take: faint and quivering beneath the fatal noose, compelled by a human law to meet death, compelled to bid farewell to all things on earth; and while standing there, as the quickly passing moments flee, each bringing his time shorter and shorter, his only thoughts connected with the great unknown and unexplored eternity, must be of that pardon he hopes to receive at the bar of God. We behold him as the black cap is drawn over his pallid face; we see the fatal rope adjusted about his neck; we hear the faint inaudible prayer from his quivering lips; we watch the sheriff as he stands aside while a

prayer is offered up in behalf of the soul about to go to its maker, it may be by some clergyman with a heart too full for utterance, or by one who sanctions the very law which creates these scenes; we see the sign given, the rope cut, and a human being wreathing in pain—strangled to death; and in the twinkling of an eye, we know that a soul has been by the power of a human law sent forth from mortality to immortality! We turn in sadness from this most terrible of all sad acts, impressed with the horrors of such a law, and probably ask the question, "*Is all this right?*"

But the scene is not yet ended. We see approaching that human form suspended by the neck between heaven and earth, a physician, employed to pronounce the victim *dead* before the officer of the law dare touch that body: we see it let down, and the rope that did the fatal work taken from his swollen, blackened, neck; we see the lifeless body, murdered by law, delivered to sad friends or cast in the Potter's field. And this is the end of a criminal! This is the end of a man—one *who may be innocent* and the victim of a law too inhuman for toleration in a Christian land. The public press

announce the execution, faintly depicting the event which but few read, save those whose imaginations are of a morbid tendency. Thus the criminal goes out of this world as an example forsooth to those who would do murder!

John Bright has truthfully said that "capital punishment is one of the most barbarous methods that the most barbarous nations can devise."

In bowing humbly and obediently to the law-making power, let us say that, so long as there remains a law in any State in the Union which gives the power to the authorities to hang the condemned murderer for his crime, let that law be faithfully and fully executed. Let those who are opposed to capital punishment take no dishonorable steps to obtain its repeal. On the contrary, let the law be obeyed, but by and through mercy, kindness, human charity, Christian feeling, love for our fellow-man, recognizing the Divine right only to take man's life, let the humane persistently assert the enormity of the practice, and strive to formulate public sentiment in favor of a repeal of the death penalty that, sooner or later, must take place.

In concluding this subject, let us ask those who sanction this law of judicial murder,—those who say, "I am in favor of choking men and women to death," (for if you hang the one you must the other, no law can be consistently made to discriminate between them,) what good comes of the enforcement of such a law, or the continuance of such a practice? What does society gain? What precept of the law of God is satisfied or avenged? What demand of justice is complied with by deliberately, legally, in a Christian land, erecting a scaffold, and in the sight of human kind, leading poor unfortunate wretches upon it that a sheriff may legally choke them to death?

Turning from these horrible scenes, do men fold their arms more complacently and rest more easily? Do they feel more secure from the pistol or the dagger? Does hanging place temptation further from the dangerous classes, or does society become purer, better, or more safe? On the contrary, it shudders at the scenes, but has not the moral courage to speak out against them.

The old maxim, "*ab assuetis non efit injuria*"—no injury is done by things long acquiesced in—is not applicable to this most solemn sub-

ject; but "*æquum et bonum est lex legum*"—what is just and *right* is the *law* of *laws*, carries with it power and authority, and is the back bone of our argument for the repeal of this law. Justice and right—justice demanding adequate punishment for all crime committed; right, that no man shall pay the penalty of his crime by death and assert the merciful demands of society.

Away with the gibbet; away with the rope; away with the black cap; away with death warrants; away with all the inhuman, unchristian mechanism used in obedience to a law founded upon injustice, and against every sense of a civilization so powerfully working to create a higher and nobler manhood, in a country where there exists a Christian civilization elevating the human race.

APPENDIX.

The laws of the different States, except those heretofore named, so far as we have examined them in relation to murder, are much alike. By a careful research, we find the statutes throughout sanction the same principle and mode of punishment, the aim being to execute the murderer.

In the States of Iowa, Maine, Michigan, Rhode Island and Wisconsin, the death penalty has been abolished, and imprisonment for life substituted In Michigan, the criminal is placed in solitary confinement at hard labor. In the States of Iowa and Wisconsin the sentence is confinement at hard labor. In the States of Georgia, Kentucky and Texas, there are special enactments established in mitigation of the death penalty, and special powers are delegated to the courts and juries, whereby they may exercise such clemency as the facts and circumstances of each will permit.

In the other States, upon a person being found guilty of a capital offence, the statutes impose the death penalty, and vest all discretionary powers with the Governors or Courts of Pardon.

We would add, that we have been unable to get any very accurate information as to the number of persons executed in this country, but have received the following official statement as to the convictions and executions for England and Wales during the years therein named:

"A return of the persons sentenced to death for murder in England and Wales in the years 1873 to 1876 is given in a Parliamentary paper recently issued. In 1873, 18 persons were sentenced to death, and 11 were executed, two of whom were women. In 1874, the number sentenced to death was 25, of whom 16 were executed, two of them being women. In 1875, the capital sentences pronounced were 33, and the number of persons executed 18, one of whom was a woman. In 1876, 32 persons were sentenced to death, and 22 executed. The total number of persons sentenced to death in the four years was 108, and the number executions 67, five of whom were women."

On the 12th day of June, 1877, the House of Commons, England, voted upon the question of the abolition of capital punishment and it was defeated. Nays 155; yeas 55.